IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23565 of 2004

Between:

Kontham Rajaiah S/o Pochamallu
RK 5 incline, Srirampur, Adilabad District

..... PETITIONER

AND

1 The Singareni Collieries Company Ltd.,

rep by it's General Manager, Srirampur area,
Adilabad District
2 The Superintendent of Mines,

RK 5 incline, Srirampur Area,

Singarani Collieries Co. Ltd.,
Srirampur, Adilabad District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, especially one in the nature of Writ of Mandamus: (i) declaring the action of the respondents in seeking to retire the petitioner from service w.e.f. 31-12-2004 as illegal, arbitrary, (ii) consequently direct the respondents to continue the petitioner in service up to
31-12-2009 or in the alternate direct the respondents to refer the petitioner to the Apex Medical Board to decide his actual age and by continuing him in Service (iii) and pass such any other order or orders.

Counsel for the Petitioner :Mr.K.VASUDEVA REDDY

Counsel for the Respondents : Mr.NANDIGAM KRISHANA RAO

The Court at the stage of admission made the following :

ORDER:

Challenging the action of the respondents in seeking to retire the petitioner from service with effect from 31-12-2004 as illegal and arbitrary and consequently to direct the respondents to continue the petitioner in service up to 31-12-2009 or in the alternative to direct the respondents to refer the petitioner to the Apex Medical Board to decide his actual age and continue him in service, the present writ petition is filed.

The brief facts that are necessary for disposal of the present writ petition are that the petitioner was appointed as a Casual Mazdoor on 26-12-1974. At the time of his appointment, as the petitioner was uneducated, his age was assessed by the Doctors of the 1st respondent company as 25 years as on 26-12-1974. By virtue of the same, now, he is aged about 55 years and entitled to continue in service for another five years and the department issued the proceedings dated 14-10-2004 intimating that he was going to attain the age of superannuation i.e. 60 years as on 26-12-2004. On receipt of the said proceedings, the petitioner approached the authorities of the respondent and pleaded that his age was assessed as 25 years at the time of his appointment and therefore, he cannot be retired from service. He gave a representation to retain him in service up to the end of 2009, but no orders have been passed. Ultimately, he was retired from service on 31-12-2004. Aggrieved by the action of the respondents, the petitioner filed this writ petition.

A detailed counter affidavit has been filed by the respondents stating that after the petitioner was sent to medical examination to determine his age, his age was assessed as 30 years as on 26-12-1974 by the Medical Officer, Ramakrishna Puram. The petitioner also submitted his driving licence stating that his date of birth is 26-12-1944 and therefore, he has to retire on superannuation at the age of 60 years i.e. on 31-12-2004. There is no variation in the records. The identity card does not reflect the correct date of birth and hence there are no grounds to interfere with the orders.

The learned Counsel appearing for the petitioner contended that where there is a variation in the age recorded in the records such as Form – B register, CMPF records, and Identity cards such cases will be referred to the Age Determination Committee/Medical Board, and therefore, he prays to give a direction to refer the

petitioner's case for medical examination.

On the other hand, the learned standing counsel appearing for the respondents contended that if there is any variance in the age recorded in the records, the employee has to be referred to the Medical Board as per the circular instructions, but there is no variance of age in between the documents.

I have perused the material available on record. A copy of the identity card and service card issued by the respondents were made available for perusal of the Court, which are not denied or disputed. The service card was prepared on 04-04-1975 and the age of the petitioner was shown as 30 years in this document. Whereas the petitioner filed an identity card said to have been issued by the Colliery Manager, Ravindra Khani, No.6, wherein the date of birth of the petitioner was shown as 26-12-1974 i.e.,
25 years. So, basing on this identity card, the learned counsel for the petitioner contended that there is a variance of age in the records and therefore, the petitioner should be referred to the Medical Board.

A perusal of the circular dated 01-08-1998 in reference No.P.49/4702/IR/1270 issued by the Singareni Collieries Company Limited goes to show that where there is a variation in the age recorded in the records such as Form 'B' Register, CMPF records and Identity Cards (untampered) such cases will be referred to the Age Determination Committee/Medical Board consisting of the General Manager/Chief, Personnel Manager and Medical Officer-in-charge of the Area. In view of the said circular, the respondents are bound by the said instructions issued by the Company.

Now, coming to the facts of the case on hand, it has to be seen as to whether there is any variance in the age recorded in the records such as Form 'B' Register, CMPF records and identity cards. Admittedly, the petitioner was referred to the medical examination with regard to the assessment of age when he joined on 26-12-1974 as a Foreman. The Medical Officer after examining the petitioner determined his age as 30 years. The identity and service card were prepared by the respondents where under the age of the petitioner was noted as 30 years. In form No. PS-4, his date of birth was mentioned as 26-12-1944, that was furnished by the petitioner himself on 29-5-1998 and copy of the same is made available to this court.

So, all these documents would clearly go to show that the petitioner was aged about 30 years by the date of entering into service and his date of birth is 26-12-1944 even according to his own declaration.

As per the circular instructions dated 01-08-1988, the identity card is not one of the documents that can be taken into consideration for the purpose of determining the variation in the age. The service card that has been prepared by the competent authority at the time of entering into service is the criteria for determining the age, but not the identity card that will be issued only for the purpose of identifying an employee to go into the mines. Therefore, the identity card as produced by the petitioner cannot be taken as a basis, to seek for the determination of the age by the Medical Board.

Since the documents produced by the respondents would clearly go to show that the petitioner was aged about 30 years as on the date of his appointment as a Casual Mazdoor in the year 1974 and at that time, the petitioner having failed to produce any proof of date of birth, was already referred to the Medical Board for determination of his age. Hence, the question of referring the petitioner to the Medical Board once again does not arise. Therefore, I am of the opinion that the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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K.C.BHANU, J.

Dated :11..04..2005.

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To

1 The General Manager,

Singareni Collieries Company Ltd.,

Srirampur area, Adilabad District.

2 The Superintendent of Mines,

RK 5 incline, Srirampur Area,

Singarani Collieries Co. Ltd.,
Srirampur, Adilabad District.

3 Two CD copies